Supreme Court of the United States

October Term 19[illegible]

No. 1014

ROSE K. HARRIS, EDYTHE R. SHERRICK, and RENEE BOURNE, suing on behalf of themselves and all others similarly situated, and UNITED BALL BEARING CO., INC., and SEYMOUR DAMBROT and PHILIP DERMAN, as copartners doing business in the name and style of DAMBROT & DERMAN, suing on behalf of themselves and all others similarly situated,

Petitioners,

v.

CITY OF NEW YORK, & ORS., &C.,

Respondents,

FORDHAM UNIVERSITY & ORS.,

Intervenors-Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INDEX

	PAGE
Statement of the Issues	1
Facts	2
(A) Legislative Background	2
(B) The Lincoln Square Project	3
(C) The sponsorship Contract	4
Opinion of the New York Court of Appeals	6
Argument	8
Applicable decisions of this Court, when applied to the questions as presented by the petitioners, make it abundantly clear that these questions are not of sufficient substance to warrant review by this Court	8
Conclusion	13
Appendix A	15
Appendix B	19

Table of Cases Cited.

Allied-City Wide, Inc. v. Cole, 230 F. 2d 827	13
Berman v. Parker, 348 U. S. 26	8
Bleecker Luncheonette, Inc. v. Wagner, 141 N. Y. S. 2d 293, affd. 286 App. Div. 828, leave to appeal denied, 309 N. Y. 1029	11
Boro Hall Corp. v. Impellitteri, 128 N. Y. S. (2d) 804 affd. 283 App. Div. 889, leave to appeal denied, 307 N. Y. 672	11

PAGE

Cremer v. Peoria Housing Authority, 78 N. E. 2d 276 10

Doremus v. Board of Education, 342 U. S. 429 13

Everson v. Board of Education, 330 U. S. 1 9

Fooiler v. Housing Authority of Portland, 256 P. 2d 752 10

Gohld Realty Co. v. City of Hartford, 104 A. 2d 365 10

Hairston v. Danville & Western Railway, 208 U. S. 598 11

Kaskell v. Impellitteri, 306 N. Y. 73, cert. den. 347 U. S. 943 11

Matter of Community Synagogue v. Bates, 1 N. Y. 2d 445 9

Matter of Diocese of Rochester v. Planning Board, 1 N. Y. 2d 508 8

People v. City of Chicago, 111 N. E. 2d 626 10

State v. Land Clearance Commission, 270 S. W. 2d 44 10

United States ex rel. T. V. A. v. Welch, 327 U. S. 546 11

Velishka v. City of Nashua, 106 A. 2d 571 10

Village of University Heights v. Cleveland Jewish Orphan Home, 20 F. 2d 743, cert. den. 275 U. S. 569 8

Zorach v. Clauson, 343 U. S. 306 9

Constitutions and Statutes Cited

PAGE

United States Constitution:

First Amendment 1, 7, 8, 9, 10
Fourteenth Amendment 2, 7, 8, 11, 12

New York State Constitution:

Article 1, Sec. 7 7
Article 18, Sec. 1 2
Article 18, Sec. 2 2

General Municipal Law of New York, Sec. 72-k 3, 11

National Housing Act of 1949 3

New York City Administrative Code, Sec. B15-37.0 . 12

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, City of New York, and others, for their statement in opposition to petitioners' application for a writ of certiorari, respectfully show the following:

1. Statement of the Issues

Under the First Amendment to the Federal Constitution, is a religious institution barred from participating in an urban renewal project unless the price paid by it for land acquired by it at public auction subsequent to condemnation is at least equal to the City's condemnation cost of the property, although the City acquires in condemnation the land and buildings completely unrestricted in use whereas the religious institution acquires the property sub-

ject to limitations of reuse and is obligated to raze the buildings, relocate the occupants and redevelop the property for limited reuse in accordance with the terms and conditions in the urban renewal plan?

Did the condemnation of the entire project area and the sale of part thereof to a religious institution at public auction constitute the taking of private property for a non-public use, in violation of the Fourteenth Amendment, because the religious institution had, prior to the condemnation of the project site, agreed to make at public auction a minimum bid in excess of the reuse value for that part of the project area set aside for redevelopment for educational purposes?

2. Facts

(A) Legislative Background

The human misery and social evils which are the outgrowth of slum and blighted areas have for many years been the subject of study by governmental agencies and students of sociology. In 1939, for the first time in the history of the State of New York, the New York Constitution granted specific power to the State Legislature to provide "in such manner, by such means and upon such terms and conditions as it may prescribe * * * for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas * * * and for recreational and other facilities incidental or appurtenant thereto" (Art. 18, § 1). For and in aid of such purposes, and "notwithstanding any provision in any other article of this constitution" the Constitution granted the Legislature further powers, among them, the power to authorize eminent domain, and the power "to authorize cooperation with and the acceptance of aid from the United States" (Art. 18, § 2).

In 1945, the State Legislature implemented the Constitutional provision by the enactment of L. 1945, ch. 887

(General Municipal Law, § 72-i, now § 72-k), which authorized a municipal corporation to acquire real property by condemnation or otherwise "necessary for or incidental to the clearance, replanning, reconstruction, and neighborhood rehabilitation of substandard and insanitary areas, together with adequate provision for recreational and other facilities appurtenant thereto".

Because of the vast financial resources required for a slum clearance and redevelopment program, no projects were undertaken by cities pursuant to the 1945 legislation until the enactment of the National Housing Act of 1949, with its financial program to assist cities to eliminate and redevelop slums and blighted areas. Then only did the possibility of implementing the State slum clearance laws become a reality. The New York State Legislature then amended General Municipal Law, § 72-k, to facilitate cooperation by cities with the federal program (L. 1950, ch. 799).

The statutory procedure followed by the City and upheld by the New York Court of Appeals has been to acquire the real property in a substandard and insanitary area and to resell it at public auction to the highest bidders, who are obligated by the terms of their deeds to relocate the tenants from the sites, demolish existing improvements and redevelop the land upon the terms and conditions prescribed by the Board of Estimate of the City of New York and the Federal Urban Renewal Administration.

(B) The Lincoln Square Project

The Lincoln Square Project Plan was adopted by the Board of Estimate pursuant to the statutes described above. It provides for clearance and redevelopment of a 13-block substandard area on the west side of Manhattan just above Columbus Circle (Urban Renewal Plan, annexed as Exhibit A to defendants' answer, not printed pursuant to stipulation). It calls for redevelopment of the area for the following uses: Collegiate, Multi-family residential, Commercial, Retail, Public and Semi-Public (*ibid.*).

There is nothing in the Plan which requires the redeveloper of the collegiate area to be a sectarian institution. By its terms, the Plan permits effectuation by either a non-sectarian or sectarian institution *(ibid.)*.

(C) The Sponsorship Contract

As part of the preliminary procedure established for slum clearance projects, the Slum Clearance Committee, in a widely advertised program, invited preliminary bids from persons or institutions willing to undertake redevelopment of a site in the proposed Lincoln Square area (R.[1] 14, 15, 153, 166). Such sponsors included persons or corporations interested in redeveloping for housing, cultural, commercial, collegiate and institutional purposes. The Board of Estimate approved four of five proposed sponsors, including Fordham University, which executed a sponsorship contract approved by the Board of Estimate, whereby it bound itself to make a minimum bid for a portion of the area to be devoted to educational purposes. The price of $7 a square foot, which Fordham agreed to bid, is in excess of the appraised value for collegiate reuse and is equal to the price to be bid by the housing sponsor in the project for the best commercial use for which the Lincoln Square site could be developed (R. 159). This method of procedure, consisting of the execution of a sponsorship contract and a subsequent open auction sale, has been used by the City in all Title 1 slum clearance projects and has been upheld by the Court of Appeals of the State of New York (see cases cited *post*, p. 11).

The purpose of the sponsorship contract was merely to assure the City that at least one bidder would make a minimum bid at the public sale and that there would be at least one educational institution interested in clearing and redeveloping the collegiate site (R. 62). This is appar-

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[1] The letter "R" refers to the pages of the record as printed for the use of the Court below.

ent from its terms, under which *Fordham could not be the redeveloper unless it was the highest bidder at the public auction* (R. 63; Fordham Sponsorship contract annexed as Exhibit B to defendants' answer, pp. 3, 4, 6 and 7).

The terms of the sponsorship contract also demonstrated that the Project Plan comprehended redevelopment of the collegiate section by *any* educational institution *which might be the highest bidder at public auction* and that it was not limited solely to Fordham as a redeveloper. Thus, the contract provided that the site plan contained therein was *only one of the "possible" plans* which might be utilized for the project (Fordham Sponsorship contract, *id.*, pp. 3, 4, 6, 7, 12).

The fact that the identity of the sponsor under a sponsorship contract is not an essential element of the Plan was also evident: (1) when St. Matthew's Roman Catholic Church withdrew its sponsorship of an institutional area at the very last moment while its sponsorship contract was before the Board of Estimate for approval and the American Red Cross was substituted as a proposed redeveloper of that area and (2) when the Board of Estimate approved the plan without approving a sponsor for one of the housing sections (R. 40).

Thus, all that the Fordham sponsorship contract did was recognize that Fordham had the same right to bid at public auction as was available to all other institutions, sectarian or non-sectarian, and bound Fordham to make a minimum bid—a term inserted for the protection of the City.

Petitioners admitted that there would be no valid constitutional objection to any aspect of the redevelopment plan (1) if the proposed sponsor were Columbia University, New York University or some other non-sectarian college (R. 34-35), or (2) if there were no sponsorship contracts and Fordham University were the successful bidder for

redevelopment of the collegiate area (R. 154). Furthermore, upon oral argument at Special Term, Supreme Court, New York County, petitioners' counsel conceded that there is no prohibition excluding Fordham *per se* from the suggested plan or procedure, assuming Fordham to be the successful bidder at the auction (R. 203-204). Petitioners' attack was therefore directed to the fact that a denominational college was afforded the same opportunity as a nonsectarian institution to execute a sponsorship contract and to bid at public auction for the acquisition and redevelopment of City-owned property in accordance with a slum clearance plan (R. 154).

Even now, before this Court, the petitioners concede that a religious institution would not be constitutionally barred from participating in the plan if it paid "the full acquisition cost [the price the City will pay in the condemnation proceeding to the property owners from whom the property was taken in the exercise of its power of eminent domain] of that portion of the project it obtains" (Petition, p. 12). Elsewhere (*infra*, pp. 9-10) we shall demonstrate how the logical consequences of this concession deprive the questions presented by the petitioners of all substance.

3. Opinion of the New York Court of Appeals

The opinion of the New York Court of Appeals, as it is set out in Appendix "B" to the petition for writ of certiorari, is an unrevised and uncorrected opinion as released, but not for publication. Because of corrections which were subsequently made, we attach the official opinion of that Court to this brief as Appendix "A", *infra*, pp. 15-18.

After reciting the facts, the Court described the action brought by the petitioners as one based upon the contention "that the resale of part of this area [the Lincoln

Square Project site] to Fordham University, a Roman Catholic institution, at a price lower than the price paid[2] by the City will be a direct subsidy in a sum in excess of three and a half million dollars, in violation of Section 7 of Article I of the New York State Constitution and of the First and Fourteenth Amendments to the United States Constitution, each of which constitutional provisions, say plaintiffs, forbids grants of public money to denominational institutions" (*infra*, p. 16).

"The argument, however," the Court found, "proceeds on an assumption false in fact" (*infra*, p. 17). The false assumption is that Fordham acquired at public auction the same property that the city acquired in condemnation. As the Court of Appeals pointed out, "what the city is buying is not the same as what Fordham is buying. The city buys land and buildings. Fordham buys the same property but *subject to its agreement to raze the buildings, relocate the tenants and use the cleared land for a collegiate campus and buildings only.* What Fordham is paying for is the re-use value of the land. • • • Therefore, there is no substance to the assertion, *on which this whole suit depends*, that Fordham is getting a gift, grant or subsidy of public property" (*ibid.*; italics supplied). As the Court further stated, the city must pay the private owners whose property it has condemned "the full value of the property in its present condition and use", while the purchaser from the city will pay less than the city pays "since it will always be the case

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[2] The "price paid" has not yet been determined. That will be ascertained in the pending condemnation proceeding, which may not be finally concluded for a year or more. It is, however, conceded that the anticipated cost of acquisition to the City will probably exceed the price paid by Fordham.

that the city is buying land and buildings and selling either cleared land or land which the purchaser must agree to clear and use for restricted purposes," and the difference between the two amounts represents the cost of the achievement of the valid public purpose of eliminating a slum (*infra*, pp. 17-18).

The Court then stressed the significant fact that "Any collegiate institution could have been a bidder at the auction" (*infra*, p. 18). This fact, coupled with its finding that the sale at auction to the redeveloper involves an exchange of considerations and not a gift or subsidy, led the Court to the conclusion that no "aid to religion" was involved (*ibid.*).

ARGUMENT

Applicable decisions of this Court, when applied to the questions presented by the petitioner, make it abundantly clear that these questions are not of sufficient substance to warrant review by this Court.

(a)

The questions as urged by the petitioners concede that religious institutions may be permitted to participate in urban renewal projects and that such participation would not involve violation of the First and Fourteenth Amendments. This concession is in accord with this Court's statement in *Berman* v. *Parker*, 348 U. S. 26, 34-35 (1954). It is also in accord with the history and practice of neighborhood planning and redevelopment (R. 50-59) and with the holdings of this and other courts that denominational institutions must be afforded equal right to participate in the benefits of zoning legislation. *Village of University Heights* v. *Cleveland Jewish Orphan Home*, 20 F. 2d 743 (Cir. Ct. 6th Cir., 1927), cert. den. 275 U. S. 569 (1927); *Matter of Diocese of Rochester* v. *Planning Board*, 1 N. Y.

2d 508, 522 (1956); *Matter of Community Synagogue* v. *Bates*, 1 N. Y. 2d 445, 458 (1956). It is also based upon the principles that religious institutions may deal at arm's length with a governmental agency; that where there is an exchange of considerations, there is no gift or subsidy; and finally, that a denial of this right to deal with governmental agencies on this basis would be a denial of the rights of the religious institution under the First Amendment. A fundamental aspect of the protection provided by the First Amendment is found in those cases in which this Court has held that public welfare legislation, such as the slum clearance statute here involved and the acts taken thereunder, which extends the general benefits of State law "to all its citizens without regard to their religious belief", is not to be considered as an establishment of religion. *Everson* v. *Board of Education*, 330 U. S. 1, 16 (1947); cf. *Zorach* v. *Clauson*, 343 U. S. 306, 312-313 (1952).

While professing acceptance of these principles, the petitioners nevertheless claim to find their violation in the circumstances of this case, because Fordham acquired the educational site at a price less than its estimated cost to the City. Their contention, however, is based, as the New York Court of Appeals found, upon "an assumption false in fact" (*infra*, p. 17). The petitioners have sought to equate two dissimilar items. What the religious institution acquires at public auction is not the same thing that the municipality acquires upon condemnation of the project site. The municipality pays the private owners the full market value of the buildings and land unrestricted as to use, as of the date of acquisition. What the religious institution or any other redeveloper buys at public auction is land which, under the terms of the sale, it must clear and redevelop for the purpose required by the plan. To do this, it must relocate present occupants, raze the buildings and erect new structures to conform to the site plan, all within time limits fixed by the plan. The land it acquires is also burdened by a restriction limiting its use to educational

purposes. Obviously, therefore, the acquisition cost to the City for elimination of a slum is wholly unrelated to the value of the real property as resold to the redeveloper. Moreover, the record in this proceeding clearly establishes that the price paid by Fordham exceeds the reuse value of the land as restricted to educational purposes. Consequently, there has been a fair exchange of considerations which removes this transaction from the ban of the First Amendment (R. 130; *infra*, p. 18).

This false assumption of the petitioners, upon which their whole case depends, stems from their refusal to recognize that the difference between the cost of acquisition to the municipality and the price paid by the redeveloper at public auction does not represent a gift or subsidy to the redeveloper but is rather a measure of the cost of accomplishing the valid municipal purpose of clearing a slum area and providing for its redevelopment in a manner which will prevent recurrence of the blight. So the courts have held throughout the nation wherever this question has arisen. *State v. Land Clearance Commission*, 270 S. W. 2d 44, 53 (Sup. Ct. Mo., 1954); *Cremer v. Peoria Housing Authority*, 78 N. E. 2d 276, 284 (Sup. Ct. Ill., 1948); *People v. City of Chicago*, 111 N. E. 2d 626, 636 (Sup. Ct. Ill., 1953); *Foeller v. Housing Authority of Portland*, 256 P. 2d 752, 767, Sup. Ct. Ore., 1953); *Velishka v. City of Nashua*, 106 A. 2d 571, 575, 576 (Sup. Ct. N. H., 1954); *Gohld Realty Co. v. City of Hartford*, 104 A. 2d 365, 370 (Sup. Ct. of Errors, Conn., 1954).

(b)

Petitioners further profess to find constitutional objections in the fact that the City, following its usual practice with respect to all tentative sponsors, allocated a portion of the site to educational purposes and, in advance of condemnation, entered into an agreement with Fordham, whereby Fordham bound itself to make a minimum bid at the public auction in an amount concededly in excess of

the re-use value of the land as restricted to educational purposes.

No federal question is thus raised. On the contrary, the question simply involves an interpretation of the State statute, section 72-k of the General Municipal Law of the State of New York. In earlier urban renewal projects, some of which involved secular educational institutions, where attacks were made upon the procedure of obtaining sponsorship contracts from persons willing to undertake redevelopment of the site for the purposes expressed in the plan, the New York Court of Appeals has uniformly upheld such procedures under the Fourteenth Amendment, and has found that the taking was for a valid public purpose and not for private benefit. *Kaskel* v. *Impellitteri*, 306 N. Y. 73 (1953), cert. den. 347 U. S. 934 (1954); *Boro Hall Corp.* v. *Impellitteri* (involving Long Island University), 128 N. Y. S. 2d 804 (Sup. Ct. Kings Co., 1954), aff'd 283 App. Div. 889 (2nd Dept., 1954), leave to appeal denied 307 N. Y. 672 (1954); *Bleecker Luncheonette, Inc.* v. *Wagner* (New York University), 141 N. Y. S. 2d 293 (Sup. Ct., N. Y. Co., 1955), aff'd 286 App. Div. 828 (1st Dept., 1955), leave to appeal denied, 309 N. Y. 1029 (1955). The latest pronouncement of the New York Court of Appeals on this subject is contained in the opinion below (*infra*, p. 18).

The instant case is governed by the long line of cases concerning which this Court, said, in *Hairston* v. *Danville & Western Railway*, 208 U. S. 598, 607 (1908):

> "No case is recalled where this Court has condemned as a violation of the Fourteenth Amendment a taking upheld by the state court as a taking for public uses in conformity with its laws."

And see the concurring opinion of Mr. Justice FRANKFURTER, in *United States ex rel. T.V.A.* v. *Welch*, 327 U. S. 546, 557 (1946). Since the New York Court of Appeals has in this and other cases upheld the procedures adopted by the City of New York as a taking for public use in conformity

ity with State law, no constitutional question under the Fourteenth Amendment is presented.

(c)

Quite apart from the lack of substance in the questions presented by the petitioners, there remains to be considered whether the petitioners may properly invoke the jurisdiction of this Court. It is crystal clear that the sole basis of the petitioners' alleged grievance is the fact that a portion of the project area was resold by the City at public auction to a religious institution.

Nothing that was presented below or is presented now to this Court affects the validity of the act of condemnation. That was a constitutional exercise of the municipality's power of eminent domain for the public purpose of clearing a slum and providing for its redevelopment in a manner which would prevent recurrence of the blight. The resolutions adopted by the Board of Estimate, the project plan, and the sponsorship agreements at no time prevented competitive bidding by other institutions. Instead, they contemplated the possibility that the respective sponsors might not be the successful bidders by providing that the successful bidder would be permitted to make changes in the manner of redevelopment so long as such changes were consistent with the basic objectives of the plan (*ante*, pp. 4-5).

Thus, it is clear that, whether or not Fordham's participation in the plan is constitutionally valid, the City's act of condemnation and the vesting of title in the City to the entire project area may not be set aside. This being so, it follows that whatever rights of possession the petitioners may have had in the premises as residential tenants and business occupants were cut off by the vesting of title in the City of New York (New York City Administrative Code, Section B15-37.0, the provisions of which are annexed hereto as Appendix P, *infra*, p. 19). The peti-

tioners are not injured by the act of resale to the redevelopers; rather, they will be evicted as the result of condemnation proceedings lawfully maintained by the City. *Allied-City Wide, Inc.* v. *Cole*, 230 F. 2d 827, 828 (Ct. of App., Dist. of Col., 1956). The language of this Court in *Doremus* v. *Board of Education*, 342 U. S. 429, 432-433 (1952) is peculiarly applicable to the petitioners:

> "Obviously no decision we could render now would protect any rights she may once have had, and this Court does not sit to decide arguments after events have put them to rest."

CONCLUSION

The petition for writ of certiorari should be denied.

May 26, 1958.

Respectfully submitted,

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Appendix A

64TH ST. RESIDENCES, INC., et al., Appellants, v. CITY OF NEW YORK et al., Respondents, and FORDHAM UNIVERSITY et al., Intervenors-Respondents.

DESMOND, J. Plaintiffs are owners and tenants of real property in the so-called "Lincoln Square Project" area on the west side of Manhattan running from 60th Street to 70th Street, bounded on the east and west by various streets and consisting altogether of 13 city blocks. Beginning in 1954, by appropriate actions of various of its public officers and bodies, the city, as authorized by section 1 of article XVIII of the State Constitution and section 72-k of the General Municipal Law (see *Kaskel* v. *Impellitteri*, 306 N. Y. 73, cert. denied 347 U. S. 934), found the Lincoln Square area to be "substandard and insanitary", approved a plan for renewal thereof and ordered its acquisition by the city through condemnation. To secure a grant of Federal moneys pursuant to the National Housing Act (U. S. Code, tit. 12, § 1701 *et seq.*), the city's Board of Estimate presented to the Federal Urban Renewal Administration the city's proposal for the "Lincoln Square Urban Renewal Project". Before such presentation the city had obtained and had included in the plan agreements by various "sponsors". Among those sponsors are intervenors Fordham University and Lincoln Center for the Performing Arts, Inc., a newly formed membership corporation with the principal function of promoting the musical and dramatic arts.

Each such sponsor agreed, as part of the Urban Renewal Plan, to bid, at the auction provided for by section 72-k of the General Municipal Law, a stated minimum price and, if it should be the successful bidder, to relocate the prior occupants, clear its part of the site and redevelop that part as required by the plan, with buildings to be approved by the city. Fordham University agreed as such

sponsor to bid, for the two-block part set aside for "educational purposes", at least $2,241,610, or $7 per square foot, which was higher than the "re-use value" fixed by any of several appraisals. The city on its part agreed to acquire that allotted part (as well as the rest of the area) by condemnation, and, if Fordham University should be successful at the auction, to convey that part to the university at the auction price. Other sponsors made separate agreements which need not be described in detail. The Federal Housing and Home Finance Agency then approved the whole project and plan. The consequence of such approval is, under the Federal statutes (U. S. Code, tit. 42, § 1450 *et seq.*), that the Federal Government will pay two thirds of the difference between what the city pays for this land and the amount realized at the auction. The city itself must stand the other third.

After the plan had been approved, as above described, plaintiffs brought this present suit to invalidate the plan and to enjoin the city from carrying it out. The theory of the complaint is that the resale of part of this area to Fordham University, a Roman Catholic institution, at a price lower than the price paid for that part by the city will be a direct subsidy of a sum in excess of $3,500,000 in violation of section 7 of article I of the New York State Constitution and of the First and Fourteenth Amendments to the United States Constitution, each of which constitutional provisions, say plaintiffs, forbids grants of public moneys to denominational institutions. After the institution of this suit the city, on February 28, 1958, took title to the project area by condemnation and conducted the auction at which Fordham University was the only bidder (at the previously negotiated price) for that part of the area which had been reserved for collegiate or educational purposes. Although the principal acts which the plaintiffs seek to enjoin have thus been performed, that in itself would be no bar to the further prosecution of the action, at least as praying for a declaratory judgment.

Appendix A

Special Term denied the motion of plaintiffs for a temporary injunction and for summary judgment and granted the motion of the defendants and intervenors under rules 112 and 113 of the Rules of Civil Practice for dismissal of the complaint on the ground that it does not state a cause of action. Appellate Division, First Department, unanimously affirmed without opinion, judgment of dismissal was entered thereon, and plaintiffs appeal to this court as of right, presumably on constitutional grounds (Civ. Prac. Act, § 588, subd. 1, par. [a]).

Plaintiffs say that the condemnation of this land and the sale thereof to the university is completely void because Fordham is a denominational school and the sale to it, according to plaintiffs, at $7 per square foot of land for which the city will pay an estimated cost of about $16 per square foot would thus be an unconstitutional grant or subsidy of public moneys to a religious corporation. The argument, however, proceeds on an assumption false in fact. Plaintiffs say that because the city arranged to sell this land at a price much below what the city will pay for it, this necessarily amounts to a subsidy or gift. But what the city is buying is not the same as what Fordham is buying. The city buys land and buildings. Fordham buys the same property but subject to its agreement to raze the buildings, relocate the tenants and use the cleared land for a collegiate campus and buildings only. What Fordham is paying for is the re-use value of the land. There is in this record no dispute of the fact, found by both courts below, that the $7 per square foot which Fordham agreed to bid, and did bid, is at least equal to the re-use value as established by several appraisals, all of which reported figures lower than $7 per square foot. Therefore, there is no substance to the assertion, on which this whole suit depends, that Fordham is getting a gift, grant or subsidy of public property. It is, of course, getting a benefit in the sense that it is being permitted to acquire valuable and

desirable property at a price which is probably lower than it would have to pay if it had to negotiate with all the private owners, but the private owners are getting from the city the full value of the property in its present condition and use. The city benefits by the achievement of its valid municipal purpose of eliminating a slum. The State and Federal statutes contemplate that the purchaser from the city will pay less than the city pays since it will always be the case that the city is buying land and buildings and selling either cleared land or land which the purchaser must agree to clear and use for restricted purposes.

Any collegiate institution could have been a bidder at the auction. Special Term pointed out, probably correctly, that Fordham would be deprived of constitutional rights if it alone were excluded from the bidding. Perhaps this is only another way of saying that, since this sale is an exchange of considerations and not a gift or subsidy, no "aid to religion" is involved and a religious corporation cannot be excluded from bidding.

At some points in their argument plaintiffs seem to be questioning the validity of the whole system of selling these properties at auctions where there is little likelihood of competing bids. That contention must be rejected (see *Kaskel* v. *Impellitteri*, 306 N. Y. 73, 95, *supra*—dissenting opinion but representing the whole court's views on that question; and see *Bleecker Luncheonette* v. *Wagner*, 286 App. Div. 828, motion for leave to appeal denied 309 N. Y. 1029).

The judgment should be affirmed, with costs.

Chief Judge Conway and Judges Dye, Fuld, Froessel, Van Voorhis and Burke concur.

Judgment affirmed.

Appendix B

Administrative Code of The City of New York, § B15-37.0

"§ B15-37.0. **Vesting of title; effect of, upon real property contracts.**—a. Where the whole of any lot or parcel of real property, under lease or other contract, shall be taken, all the covenants, contracts and engagements between landlord and tenant or any other contracting parties touching the same, or any part thereof, upon the vesting of title in the city, shall cease and determine and be absolutely discharged. Where part only of any lot or parcel of real properly so under lease or other contract shall be so taken, all contracts and engagements respecting the same, upon such vesting of title, shall cease and determine and be absolutely discharged, as to the part thereof so taken, but shall remain valid and obligatory as to the residue thereof.

b. All persons in possession of such premises at the time of the vesting of title thereto in the city, shall at the option of the city become tenants at will of such city unless within ten days after the vesting of title they shall elect to vacate and give up their respective holdings. Where a person in possession is entitled to an award in such proceeding, the reasonable value of his use and occupancy of the premises, as fixed by agreement, by the court in such proceeding or by any court of competent jurisdiction, during the period between the date of the vesting of title in the city and the date of the actual payment of the award, shall be a lien against such award, subject only to liens of record at the time of the vesting of title in the city."